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In re Application of HOPF et al  
U.S. Application No.: 09/269,148  
Int. Application No.: PCT/EP97/02086  
Int. Filing Date: 24 April 1997  
Priority Date: 12 September 1996  
Attorney Docket No.: 3438 US  
For: METHOD FOR THE DETERMINATION  
OF COMBUSTION MISFIRES

DECISION ON PETITION

This is in response to applicants' "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action Under MPEP 711.03(c) II" filed 29 January 2001.

**BACKGROUND**

On 24 April 1997, applicants filed international application PCT/EP97/02086, which claimed priority of an earlier Germany application filed 12 September 1996. A copy of the international application was communicated to the USPTO from the International Bureau on 19 March 1998. A Demand for international preliminary examination, in which the United States was elected, was filed on 29 January 1998, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 12 March 1999.

On 12 March 1999, applicants filed national stage papers in the United States. The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 08 November 1999, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) along with a Notification of a Defective Oath or Declaration (Form PCT/DO/EO/917), indicating that a properly executed oath or declaration in compliance with 37 CFR 1.497 must be filed along with a surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty (30) months from the priority date.

On 03 October 2000, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that the present application is abandoned based on applicants' failure to respond to the Notification of Missing Requirements mailed 08 November 1999.

On 29 January 2001, applicants filed the present petition. The petition states that the Notification of Missing Requirements was not received by applicants' representative and that a search of the application file jacket and docket records indicates that the Notification of Missing Requirements was not received. The petition further states that it is accompanied by a copy of a docket record where the Notification of Missing Requirements would have been entered had it been received and docketed.

### DISCUSSION

According to the Official Gazette at 1156 OG 53 and MPEP 711.03(c), a petition to withdraw a holding of abandonment based on failure to receive an Office communication must include: (1) a statement by the practitioner that the Office communication was not received by the practitioner, (2) a statement by the practitioner that he searched the application file jacket and docket records and that the search indicates that the Office communication was not received, and (3) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

With regard to item (1) above, applicants' representative has provided the required statement.

With regard to item (2) above, applicants' representative has provided the required statement.

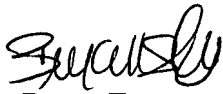
With regard to item (3) above, in order to satisfy the evidentiary requirements necessary for a withdrawal of the holding of abandonment, applicants should furnish a docket record listing the responses due to the USPTO on 08 December 1999 for all cases handled by the representative's firm. In the present case, the petition states that the submitted copy of the attorney's office docket record reflects "all due date docket entries". The copy of the docket record shows no entry for a response due to a Notification of Missing Requirements on 08 December 1999.

### CONCLUSION

For the reasons above, the petition to withdraw the holding of abandonment is GRANTED.

Accordingly, the holding of abandonment in the present application is hereby WITHDRAWN and the Notification of Abandonment mailed 03 October 2000 is hereby VACATED.

The application will be forwarded to the DO/EO/US for processing in accordance with this decision. Copies of the Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) and the Notification of a Defective Oath or Declaration (Form PCT/DO/EO/917), which were originally mailed on 08 November 1999, are attached to this decision. Applicants are required to respond to the Notification of Missing Requirements within ONE (1) MONTH from the mailing date of this decision. Extensions of time are available under 37 CFR 1.136(a).



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